

**ZONING BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 9, 2003
(Approved as amended 12/2/03)**

PRESENT: Forrest Esenwine, Chairman; Jack Dearborn, Vice Chairman; June Purington; Harry Wetherbee; Tim Galvin, Alternate; Naomi L. Bolton, Land Use Coordinator

GUESTS: Pamela Livingston; Leo Provencher; Jeanne Wheldon; Gary Herbert; Patricia Herbert; Peter S. Schauer; Karen Car; Gordon Brown; Diane Lamb; Ruth Jones; David Eric Welch; Roy Tilsley; Robert C. Palmer; Dino Rossi; Kristen Rossi; Neal Kurk; Ginger Esenwine; Burt Brown; Richard Brown; Robert Brown; Paul Dugas, NBAC; Richard Uchida; Jeff Kevan, TF Moran, Inc.; Peter McGlew, Aries Engineering, Inc.

I. CALL TO ORDER:

Chairman Esenwine called the meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine asked the members present to introduce themselves and explained the procedure in which the board conducts its business. Chairman Esenwine welcomed newly appointed alternate member Tim Galvin and appointed him to sit on the board as a voting member for tonight.

II. PUBLIC HEARINGS:

Case #2703 James & Laurie Nason
Variance, Articles 22 & 14, Section 22.4.1 & 14.1
Applicant is proposing to subdivide the property on 325/327 North Stark Highway.
Tax Map 201-077 325/327 No. Stark Highway

Chairman Esenwine asked if the parties were present for this case. Naomi informed the board that she didn't see either of the Nason's present at this time. Chairman Esenwine stated that neither party is here to speak on this and we have a problem with the application anyway. It appears that the application is defective. The application indicates that there is a map attached where there is none. Chairman Esenwine moved to dismiss the case based on the fact it is a defective application, June Purington seconded the motion. Vote: Unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

At this point Tim Galvin excused himself from the board for this hearing as he is the applicant.

Case #2803 Timothy & Carol Galvin
Special Exception, Article 30-A, Section 30-A.3.1.3
Applicant is requesting permission to build a barn in the Mt. Dearborn Historic District Overlay.
Tax Map 407-093 488 Mt. Dearborn Road

Tim Galvin was present. Before the board allowed Mr. Galvin to continue, the board needs to determine whether or not the application is complete. Chairman Esenwine moved to accept the application as complete, Jack Dearborn seconded the motion, unanimous vote in favor. Mr. Galvin explained that the purpose of this application is to erect a structure that is to be used to house livestock, specifically horses. There currently is not such a structure on the property. There are two running sheds. The purpose of doing this is for 1) the esthetics of the property and 2) for proper maintenance and storage of the animals. They have decided to locate the building in such a place that is approximated to have easy access to water, so they are not lugging it out of the kitchen sinks during the cold months. Mr. Galvin then proceeded to answer the seven points of hardship as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: The site is an appropriate location for the use/construction of a barn. Said proposed structure/barn is in keeping with several (more than three) similar structures along Mt. Dearborn Road; is in keeping with the spirit and intent of the current "Historic District Overlay" for the Mt. Dearborn Road; is in keeping with the original uses of the property as document by the Town of Weare Historical Society (see addendum photography taken from Weare Historical Society pictorial history, marked photo's 1 & 2).
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed use will not adversely affect the neighborhood and shall in fact positively add to the real estate value of the neighboring area; Said proposed structure/barn is in keeping with the spirit and intent of the Historic Overlay District of Mt. Dearborn Road.
3. The proposed use will not be a nuisance or serious hazard vehicular traffic or pedestrians: The proposed use shall not present a nuisance or serious hazard to or for vehicular traffic or pedestrians.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed use shall not cause an undue burden to the Town through the provision of basic Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: There shall be no need of "off-street parking" as the proposed structure is not for the purpose of a commercial enterprise and is intended for private use only; in that the proposed structure/barn is intenede to be positioned with a setback of more than 400 ft (more or less) from the roadway ample parking for private use will be accommodated.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: Existing trees, dense planting, and naturally occurring shrubs provide "buffer" to screen neighboring uses from the proposed structure/barn.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

September 9, 2003 (Approved as amended 12/2/03)

Page 3 of 10

Mr. Galvin then shared with the board several color photographs of the current property to depict where the barn/structure is to be placed. The photographs also gave the board an idea of how much vegetation that is currently there.

Harry Wetherbee asked about what the building would be constructed of. Mr. Galvin stated that he would be using metal sheeting on the roof of the barn and it would be a wooden structure, board and batting, just like the running sheds. Mr. Galvin stated that the two running sheds currently have a mixture of both asphalt shingles and metal sheeting on the roofs.

Approving Abutters: Neal Kurk was present. Mr. Kurk stated that from the way he understands the ordinance, when the property already has a dwelling unit on the lot, the barn has to conform in style, appearance and materials to the character and period of the dwelling unit on the lot. The addition needs to look like the rest of the buildings. Mr. Kurk stated that he doesn't have a problem with this request and he would be considered an approving abutter.

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there was no further comments or questions related to this case, Chairman Esenwine closed this hearing at 8:04 PM.

Tim Galvin retained his seat back of the board for the rest of the evening.

Case #2903 David E. Welch

Special Exception, Article 24, Section 24.8

Applicant is seeking permission to allow off street parking with the front and side setbacks.

Tax Map 109-017

299 South Stark Highway

The board reviewed the application to see if it is a completed application. Chairman Esenwine moved to accept the application as complete, Tim Galvin seconded the motion, unanimous vote in favor. David Welch was present along with his attorney, Roy Tilsley and Bob Palmer, surveyor. Mr. Tilsley explained that what they are asking for is a special exception to the front and side setbacks to construct basically 19 parking spaces at the front of the lot. This lot is approved by the Planning Board for used automobile sales, as Raceway Auto. The current approval has the parking in the back. When Mr. Welch initially went before them with the site plan there was some dispute as to where the property line was by the road, due to the discontinuance of the old Route 114 back in the 40's or 50's. That's been resolved by a quitclaim deed from the Town, so now he is seeking basically to have a display area at the front of the lot. Of the 19 spaces being proposed, 15 would be for display, 2 would be for regular customer parking and 2 would be for handicap parking. Most of the spaces are located within the 50' front setback, so that's the main point of the special exception application, but there are at least 3 spaces which are located within the 30' side setback, so they are asking for a special exception for those spaces as well. Mr. Tilsley showed the board pictures of the property, but was hesitant because they are pictures that Mr. Welch developed on his computer putting a potential sign that doesn't exist in various places. Chairman Esenwine then asked Mr. Tilsley to go through the seven points, which he did as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: The property is located in a commercial zone in which motor vehicle sales and service are an allowed use. In order for an automotive sales facility to be successful, it must have a display area visible to passing motorists. Since automobile sales are an allowed use, a display area out front is consistent with overall community development.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The special exception under Article 24, Section 8 will allow parking of customer and display vehicles within the 50' front setback and the 30' side setback. This is an existing use in the neighborhood, which is located in a commercial district. The neighborhood and property values benefit by allowing the dealership the necessity of placing display vehicles in a place where they are visible to passing motorists. A successful dealership will help property values in this commercial zone. Neighboring properties have commercial uses, including a wholesale bakery business located on the abutting property to the north.
3. The proposed use will not be a nuisance or serious hazard vehicular traffic or pedestrians: Route 114 is a major road in town and many other vehicle sales businesses in town have display areas within the front and side setbacks without creating a nuisance or serious traffic hazard. The existing driveway will provide adequate access to the property to potential customers and will eliminate any problem of customers stopping on Route 114 to look at vehicles. Customer parking will also be provided in the 50' setback area, in order to assure that customers pull into the business location and park in the lot, rather than on the side of the roadway.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed special exception will pose no additional burden on the Town or the provision of basic town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: Adequate off-street parking is being provided in both the proposed front area, for which this special exception is sought, as well as in the existing parking located to the rear of the lot.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: The applicant is willing to provide a buffer area to screen neighboring uses from the extension of its parking and display area, if required by the Board.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: The applicant is willing to consider any reasonable restrictions or conditions in order to insure compliance with this section.

The proposed parking shows to come right up to the front property line and the ones on the side come approximately 4-5 feet from the side line property, according to the map that was turned in with the application, which was signed and stamped by Bob Palmer, LLS.

Approving Abutters: NONE

Disapproving Abutters: Karen Car, 309 South Stark Highway, was present and stated that she does believe that this will make her property value go down. Her property is down the hill from Mr. Welch's property. Mrs. Car stated that he right now, with the supposedly 6-8 cars he is allowed to have, makes an awful lot of noise. He works on cars continuously late into the night. They have brought this up to everyone, including Mr. Stone and he has been found to be in

violation of these things. He continuously parks in the offset. He parks out front. He pretty much has been doing whatever he wants for the past couple of years. If the Town allows him to put cars out there she questioned the fact that people going by at 50-60 miles per hour and having "eye candy" is going to create an accident. Mrs. Car stated that when she called Mr. Looney from the State DOT he said the Mr. Welch showed him where his property line is and Mrs. Car questions that. She questions that all these maps have never been surveyed to the inch, because Mr. Looney stated that he made the 400 feet sight distance by two inches. She questioned the two inches if it has never been stamped, not a planned map but a surveyed map. Mrs. Car continued, that for all this to be put in, Mr. Welch needs to follow RSA 674:27, which she gave a copy to the board. She also gave the board a copy of requirements per the State of NH that points out what an auto repair shop needs to comply with. She also gave the board two letters from friends that have been over to her house for dinner and due to the noise and odors couldn't eat on the deck, but had to eat inside. Mrs. Car then handed the board a letter from Scott Looney, State of NH DOT that states Mr. Welch would have to put in proper drainage, which hasn't been discussed. Mrs. Car pointed out that right now he works late at night, all hours of the night and by increasing the number of spots allowed is just going to increase the noise, etc. He is supposed to have high quality used cars that he is supposed to wash and put out there. He brings them in with the sides missing and they are creating new sides. She has seen Mr. Welch pressure washing cars down into the dirt. When he moves in two years and her land and water is contaminated, where is she to go.

Mr. Dearborn stated that there is a performance standard in Article 3.2 as part of the zoning. She would need to go to Mr. Stone press the issue for him to make a determination.

Mrs. Car stated that she is very frustrated living next to this man. He makes it very hard to have a normal life and if the board gives him that much more, it is only going to get worse. She is not opposed to having commercial but when there is something going on right now as loud and obnoxious continuously, why would the board give him a lot more, when he can't even conform within the guidelines of having eight cars, she didn't think this would not be a benefit. Mrs. Car stated that he has not stayed within the guidelines he was given, why increase it? She asked that the board say no to him based on his past performance, and he doesn't follow through. Mrs. Carr asked about the parking area: is it going to be paved? Where is all the water going to run? What about lights? Where will they turn around?

Chairman Esenwine pointed out that those items are taken up at the Planning Board level.

Mrs. Car stated that he has a used auto sales lot and not a repair garage, which is what the Planning Board already approved. Mrs. Car still insisted that the board should really consider putting cars out there as well as having the property surveyed to verify the lot lines so that the spaces can actually be depicted and measured.

Jack Dearborn read a letter indicating that a plan needs to be sent to the State of NH and at that time they will determine if the driveway has to be updated or modified for this particular use.

Mr. Palmer stated they are in the process of preparing an update to the previously approved site plan and they need the special exception before they can move forward with that step. At that time it will be submitted to the State of NH and the Planning Board for approval. At that time both parties will address drainage and all other issues pertinent to this new proposal. Mr. Welch has a driveway permit for the commercial activity and if they are to upgrade, he has to upgrade

September 9, 2003 (Approved as amended 12/2/03)

Page 6 of 10

the driveway permit. The State will determine that when they submit the site plan. Mr. Palmer also pointed out that D & R Motors//Sanel; part of Lanctots' plaza; and the Cold Springs RV near the Colby Road intersection currently have parking spaces or allow parking in the setback.

Mrs. Car still questions the boundary markers. He has had all these surveyors come and do work but no one has actually done a survey.

Chairman Esenwine asked Mr. Palmer if is he has done any surveying. Mr. Palmer responded, he has found posts out back and he used the other surveyors work and it appears to be the property, as it exists. Mr. Palmer further stated that there is no found boundary on that corner. Chairmen Esenwine then asked, so it could be off? Mr. Palmer responded, it could be maybe an inch or two.

Chairman Esenwine stated that he is concerned about the site distance.

Jack Dearborn stated that he would like to make a statement, everyone else that has come before the board for something encroaching a setback, we have asked for them to come back with the area affected validated by a surveyor. The board agreed that this should be same. The plan has been stamped by Mr. Palmer, but there is no error statement, not certifying any of the boundary lines have been validated. Mr. Palmer stated that this is a site plan based on another surveyor's work, which he verified the research and he will set the bound when it gets submitted to the planning board.

Mr. Tilsley reminded the board that the front boundary is based on the recent deed from the Town to his client with a quit claim in the interest in the old Route 114, so that is a fairly recent deed.

Mr. Dearbon stated that this should be sent back for the applicant to come back with the front boundary lines and side lines surveyed and show how many feet they are to the front and side lines. The board agreed.

Jack Dearborn then made a motion to require verification of the front and side boundary lines and show how many feet they will be encroaching into the front and sidelines, June Purington seconded the motion. unanimous vote in favor.

Chairman Esenwine stated that this will be continued to our next meeting, which will be October 7, 2003, but a formal motion will be made later in the evening during the case decisions.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:50 PM.

Case #3003 Pamela Livingston

Variance, Article 17, Section 17.2

Applicant is seeking permission to replace mobile home with a newer one in a residential zone.

Tax Map 404-083

265 Quaker Street

The board reviewed the application for completeness. Pamela Livingston was present. Ms. Livingston went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: this mobile home has been on the property for 34 years, which was before zoning. The property directly across the street has a mobile home on the property as well, which has been there for 30 years. I am looking to replace this 34-year-old mobile home with a newer/larger mobile home placed on the lot to conform to all the setbacks, which currently it does not. The newer mobile home in my opinion certainly won't diminish the existing values. It certainly will increase the value of this property.
2. That the granting of the variance **will not** be contrary to the public interest because: no adverse effect on the public interest has been identified or is anticipated.
3. That the enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The property currently has a 34 year old mobile home located in both the front and side setbacks. The property consists of 3.16 acres, with 202 feet of frontage on Quaker Street. The mobile home was placed there prior to zoning. After zoning was implemented, the lot was zoned residential with the mobile home already on it. In the residential zone, manufactured homes are not permitted. I was told that I could replace the old one with a new one in the exact location and the same size without going for a variance, because it was prior to zoning, which doesn't make sense because it sits in both setbacks. I am asking to actually make the situation better by putting the mobile home further back on the lot, which will allow for a new driveway configuration making it a much safer situation all around.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning for the following reasons: the lot currently has a mobile home on the lot and a driveway immediately off the pavement. By replacing a newer mobile home farther off the road it will be creating a safer situation for the property owner and the residents. I believe safety is one of the general purposes of the zoning and this proposal creates a much safer environment both for traffic passing the property and the owners of the property. I'm not sure why this was zoned residential, which doesn't allow mobile/manufactured homes to be placed there, but it already had one on the property prior to establishing zoning. We are only asking to replace one manufactured home with another.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: no public or private rights have been identified which this request would interfere with, and none are anticipated.
4. That by the granting of this variance, substantial justice **will be** done because: for the past 34 years there has been a mobile home on the lot located within the setbacks. I am replacing this mobile home with a new one, sited on the property in a way that meets the zoning setbacks.
5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: there is nothing in the spirit and intent of the Weare Zoning Ordinance which this dwelling would be contrary to. Again, I

believe this proposal creates a better situation, by removing the setback issues as well as improving the ingress and egress of the property, making it safer

Approving Abutters: Jeanne Wheldon, Gary & Patricia Herbert each stated that they were in favor of this application.

Disapproving Abutters: NONE

Other Boards: NONE

Public At Large: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:58 PM.

Case #3103 NBAC Corporation
Special Exception, Article 28, Section 28.7
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland.
Tax Map 405-062 South Stark Highway

Case #3203 NBAC Corporation
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 405-062 South Stark Highway

Paul Dugas from NBAC Corporation, Jeff Kevan from TF Moran, Inc., Peter McGlew from Aries Engineering, Inc. and Attorney Richard Uchida were present for this hearing. The board felt that both these hearings could be heard together as they are related to the same project. The board briefly discussed these applications and felt that they couldn't act upon the applications without getting any comments from the Planning Board and Health Officer. The board did receive comments from the Conservation Commission, which the board shared with the applicants. The Planning Board hasn't seen this application even for a first time. It is scheduled for this Thursday, October 9, 2003. In order for the board to make a decision on the wetlands crossing, they need comments back from the Planning Board. Naomi indicated that there is a chance that the Planning Board might not even get to this hearing on Thursday evening because of the long list of applications. If it doesn't get heard it could possibly be taken up at the next work session of September 25, 2003. With that being said, the board wanted to wait and hear the presentation on the same evening, instead of hearing the presentation and then next month have to listen to the same presentation again as a reminder. Being there were no further comments or questions, Chairman Esenwine closed this hearing at 9:15 PM.

III. CASE DECISIONS:

Case #2703 James & Laurie Nason
Variance, Articles 22 & 14, Section 22.4.1 & 14.1
Applicant is proposing to subdivide the property on 325/327 North Stark Highway.
Tax Map 201-077 325/327 No. Stark Highway

This case was dismissed as a defective application.

Tim Galvin removed himself from the board for the next decision.

Case #2803 Timothy & Carol Galvin
Special Exception, Article 30-A, Section 30-A.3.1.3
Applicant is requesting permission to build a barn in the Mt. Dearborn Historic District Overlay.
Tax Map 407-093 488 Mt. Dearborn Road

The board proceeded through each point, one at a time. Point #1: Jack Dearborn moved to accept point #1, June Purington seconded the motion, unanimous in favor (Purington, Wetherbee, Dearborn, Esenwine). Point #2: Chairman Esenwine moved to accept point #2, Harry Wetherbee seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine). Point #3: Jack Dearborn moved to accept point #3, Chairman Esenwine seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine). Point #4: Chairman Esenwine moved to accept point #4, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine). Point #5: Jack Dearborn moved to accept point #5, Harry Wetherbee seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine). Point #6: Jack Dearborn moved to accept point #6, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine). Jack Dearborn moved to grant the special exception on Case #2803, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine).

Tim Galvin resumed his position on the board for the remainder of the evening.

Case #2903 David E. Welch
Special Exception, Article 24, Section 24.8
Applicant is seeking permission to allow off street parking with the front and side setbacks.
Tax Map 109-017 299 South Stark Highway

June Purington moved to continue this hearing to October 7, 2003 and require verification of the front and side boundary lines and show how many feet they will be encroaching into the front and sidelines, Tim Galvin seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3003 Pamela Livingston
Variance, Article 17, Section 17.2
Applicant is seeking permission to replace mobile home with a newer one in a residential zone.
Tax Map 404-083 265 Quaker Street

The board went through and voted on each point of hardship as follows: Point #1: Jack Dearborn moved to accept point #1, Tim Galvin seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Point #2: June Purington moved to accept point #2, Harry Wetherbee seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Points #3a, 3b & 3c: Jack Dearborn moved to accept points #3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Point #4: Tim Galvin moved to accept point #4, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn,

Esenwine, Galvin). Point #5: Harry Wetherbee moved to accept point #5, Chairman Esenwine seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin). Jack Dearborn moved to grant the variance for Case #3003 and stated that the existing mobile home is located in both the front and side setbacks, this is making the situation more conforming, June Purington seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

Case #3103 NBAC Corporation
Special Exception, Article 28, Section 28.7
Applicant is requesting permission to permit construction of a paved roadway and associated grading within an area that has been defined as a wetland.
Tax Map 405-062 South Stark Highway

Case #3203 NBAC Corporation
Special Exception, Article 27, Section 27.3.10
Applicant is requesting permission to have individual wells and septic systems in a cluster development.
Tax Map 405-062 South Stark Highway

Jack Dearborn moved to continue both Case #3103 and #3203 to October 7, 2003 and would like to have written Planning Board comments in regard to the wetlands crossing, as well as written comments from the Health Officer, Chairman Esenwine seconded the motion, unanimous vote in favor (Purington, Wetherbee, Dearborn, Esenwine, Galvin).

IV. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn at 9:40 PM, Harry Wetherbee seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator